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**From:**

**Sent:** Wednesday, July 02, 2008 2:43:49 PM

**To:**

**Cc:**

**Subject:** Request for assistance - Summons/collection question

This email responds to the questions posed in your email of April 18, 2008. In that email you asked about situations where a taxpayer ("A") may have fraudulently transferred property to another ("B"), but we cannot assess B as a transferee because the statute of limitations under section 6901 has expired. There is an assessment against A. Under state law, if we can show that the transfer was a fraudulent conveyance, we would be able to collect A's assessed liability from the fraudulently conveyed assets owned by B. To prove that the conveyance was fraudulent, we need to gather information regarding the substance of the transaction. The Service would like to issue a summons to B for this information. There are no plans to assess B nor is there an open case regarding B. The sole purpose of the summons would be as part of the investigation into A.

1) Must A receive notice of such a summons to B?

The Service does not need to provide A with notice of a summons to B, based on the facts above, as this summons falls within an exception to the notice requirements. When a third-party summons is issued, section 7609(a) requires notice be given to the taxpayer identified in the heading of the summons and any other person (whether an individual or an entity) identified in the description of summoned records. However, this notice requirement does not apply to any summons "issued in aid of the collection of an assessment made or judgment rendered against the person with respect to whose liability the summons is issued." I.R.C. § 7609(c)(2)(D)(i). In this case, the Service has an assessment against A. The summons is in aid of collection of this assessed tax liability because it will help the Service determine if B has custody of assets that can be used to satisfy the assessed tax liability of A. Thus, the Service is not required to provide A with notice of the summons. See also IRM 25.5.6.5.1.

2) Must the Service send B a notice of third-party contacts?

The Service must provide A with a notice that third-parties may be contacted with respect to the collection of A's tax liability. Section 7602(c)(1) states that the Service may not contact third-parties with respect to the determination or collection of the tax liability of the taxpayer without providing the taxpayer with advance notice that such contacts may be made. In this case, A is entitled to notice that the Service may contact third-parties because the Service plans to contact B with regards to A's tax liability. Moreover, based on the facts presented, none of the exceptions to providing notice of third-party contacts applies. See I.R.C. § 7602(c)(3).

B, however, is not entitled to such a notice of third-party contacts. The Service will not be contacting anyone else with regards to the tax liability of B. Thus, the statute does not require B be provided with notice.

3) How should the summons be captioned?

The summons should be captioned "In the matter of [the taxpayer]." Since B is not the entity being investigated, nor can B be assessed due to lapse of the statute of limitations under section 6901, there is no reason for B to be included in the caption.